

TRANSBORDER CONSTITUENT DIPLOMACY:  
AN ANALYSIS OF THE PACIFIC NORTHWEST  
ECONOMIC REGION'S WATER POLICY WORKING GROUP

A Thesis Submitted to the College of  
Graduate Studies and Research  
In Partial Fulfillment of the Requirements  
For the Degree of Doctor of Philosophy  
In the Department of Political Studies  
University of Saskatchewan  
Saskatoon

By

SHANNON KATHERINE PARRY

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## ABSTRACT

With water resources becoming scarcer every year, studying the negotiation processes that leads to the treaties that govern the distribution of water rights across national boundaries is more important than ever. Sub-state units sometimes play an important role in the negotiation of such treaties and thus it is important to better understand how specific types of regional, transborder sub-state units operate both within the context of their respective federal systems and in relation to each other.

Exploring the case study of the Columbia River Treaty—governing the area known as the upper Columbia River Basin— and the Water Policy Working Group of the Pacific NorthWest Economic Region (PNWER), this thesis uses documentary sources and original qualitative interviews to examine the roles of sub-state governments and federalism on the original Columbia River Treaty negotiations, as well as the effect the historical legacy of the Treaty negotiations has left on constituent diplomacy today. Examining constituent diplomacy through a micro rather than macro lens, the thesis also explores the role of constituent diplomacy within PNWER with respect to the upcoming Columbia River Treaty negotiations and the impact that PNWER’s governance model has on the effectiveness and functionality of constituent diplomacy.

The thesis demonstrates that sub-state governments, specifically the B.C. government, played a vital role in original Treaty negotiations, and suggests that the past Treaty negotiations are relevant to constituent diplomacy today because of modern-day and future Treaty negotiations and ongoing Treaty implementation. Drawing on documentary evidence and original interview data, this thesis details current PNWER governance structures and practices and then moves to argue that the structure, functions and dynamics

of the Canadian and American federal systems can impact the effectiveness and functionality of constituent diplomacy.

## ACKNOWLEDGEMENTS

Firstly, my sincerest thanks to my advisor, Dr. Loleen Berdahl, for her support of my research, for her knowledge and for her patience during this process. Her insight and guidance were more helpful than I could have imagined when I began this journey. Thank you, Dr. Berdahl. I would also like to thank my committee members, Dr. Joe Garcea and Dr. David McGrane, as well as my external examiner Dr. Robert Patrick and my graduate chair, Dr. Neil Hibbert.

Last but certainly not least, I would like to thank my family: to my parents for always believing in me and for showing me that when everyone else is sitting, I can (and should be) the one standing up for what is right. Finally, thank you to my sister for holding me accountable to a higher standard—both in life and academics.

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## **CHAPTER 1: Introduction**

Transborder issues present challenges and issues that are beyond the scope of traditional political institutions. Non-traditional political institutions are therefore needed to create a space for these unique challenges. These institutions can be constituent diplomatic in nature. Constituent diplomacy is the term given to “the participation of regional and local governments in foreign policy making and international affairs” (Kincaid 2009, 74). Constituent diplomatic units include sub-state governments such as American states and Canadian provinces.

The Canadian and American sub-state governments have created an institution called Pacific NorthWest Economic Region to address such issues. PNWER is an institution that consists of private sector and public sector non-governmental actors, and legislators for the provinces and states involved. PNWER also has several working groups, including the Water Policy Working Group (WPWG) where members discuss topics such as transborder water treaties, water boundary disputes and other related topics. The Water Policy Working Group was chosen as the working group upon which the research would focus; a personal interest in transborder water issues was behind this choice. Amongst a panacea of issues on the docket of the WPWG, the Columbia River Treaty stood out as an issue rich in constituent diplomatic relationships.

The upper Columbia River Basin, which is at the center of the Treaty, begins in British Columbia, and includes seven US states—most of Idaho, 50 percent of Oregon and Washington, and parts of Wyoming, Utah, Nevada and Montana (Hyde 2010, 2).

## Map of the Columbia River Basin



Figure 1-1 (Source: Oregon State University, 2013)



## **1.1 General Purpose of Thesis**

The general purpose of this thesis is to contribute to knowledge regarding constituent diplomacy. Cases of constituent diplomacy by sub-state governments in federal systems, such as Quebec within Canada (Lecours in Michelmann, 2009), have been well-documented and studied; occurrences of constituent diplomacy within institutional contexts, such as the Rocky Mountain Trade Corridor (Vengroff et al 2004, 23) have been studied far less. In particular, researchers' interested in constituent diplomacy have often focused on large-scale examples or overarching themes of the phenomenon of constituent diplomacy, as is the case in Vengroff et al.'s 2004 paper about constituent diplomacy and the Canadian provinces. While it is valuable to have data and information about constituent diplomacy as a widespread phenomenon and to learn about larger examples of constituent diplomacy in action, there is a gap in information where smaller examples of constituent diplomacy are concerned. There are also potential differences between large and small scale cases of constituent diplomacy, including the way that these different sized cases of constituent diplomacy interact with national governments. This research is a step forward in understanding this important aspect of constituent diplomatic relations. In order to contribute original information in these areas, there needs to be a theoretical lens through which this research is analyzed.

## **1.2 Conceptualization of Constituent Diplomacy**

In this subsection of the thesis, I will define constituent diplomacy, then discuss the causes of constituent diplomacy, as well as define and discuss simple regional constituent diplomacy. At the end, I will provide and explain a real-world example of simple regional constituent diplomacy.

Noe Cornago describes constituent diplomacy as “sub-state governments’ involvement in international relations, through the establishment of formal and informal contacts, either permanent or ad hoc, with foreign public or private entities, with the aim to promote socio-economic, cultural or political issues, as well as any other foreign dimension of their own constitutional competences” (in Requejo 2009). Constituent diplomacy is also known as paradiplomacy, though Kincaid believes that constituent diplomacy is a phrase that emphasizes the importance of the individual units of government involved in the process (2009). For Kincaid, paradiplomacy does not take the same approach to studying governments as constituent diplomacy; the emphasis placed on federalism by paradiplomacy omits many cantons, provinces and nationalities (constituent units) that constituent diplomacy values (Kincaid 1990, 74). Other scholars suggest the differing emphasis that paradiplomacy and constituent diplomacy place on federalism has more to do with globalization and the changing world.

Scholars suggest a number of reasons why constituent diplomacy occurs. For Kincaid, “[t]he principal causal factor for constituent diplomacy is the freedom of action produced by democratization and market liberalization” (2009, 16). Market liberalization is the lessening of restrictions on the market and the opening of the economy (International Monetary Fund Staff, 2001). Where high levels of democracy are present and there are very few restrictions on an open market, constituent diplomacy will be very present due to the ability of each actor to act independently to a certain degree. Canada and the United States, for instance, are both democracies with highly liberalized markets. According to Kincaid, this has resulted in high levels of constituent diplomacy in both Canada and the United States (Kincaid 2009, 17). The fact that neither nation’s constitution specifies or

delineates constituent units' power to engage in foreign affairs has less bearing on whether or not constituent diplomatic activity is present (Kincaid 2009, 20). According to Kincaid, a "characteristic of constituent diplomacy is that it occurs whether or not the nation-state's constitution assigns any foreign affairs powers to the constituent governments" (2009, 20). More formal constitutional powers of constituent diplomacy involving approval by parliament or congress are often unused; constituent diplomatic powers stem from the existence of constituent units—provinces and states respectively (Kincaid 2009, 20). The fact that Canada and the United States both had pre-existing constituent jurisdictions (provinces and states, respectively) and developed institutional infrastructure has much greater bearing on whether or not constituent diplomacy will occur in either nation (Kincaid 2009).

Constituent diplomatic relationships can be based on several different aspects of foreign policy. Requejo (2009) and Michelmann (2009) assert that ethnic and cultural similarities are the most important factors that bring constituent diplomacies together in foreign policy. Keating (2000) describes economically induced constituent diplomatic relationships such as PNWER. Keating argues that these economically based constituent diplomatic relationships are the most common form of constituent diplomatic partnership (2009). Economics is also, according to Keating, the most important factor to examine when studying constituent diplomatic relationships, not culture or ethnic similarity as scholars like Michelmann (2009) and Requejo (2009) suggest. While Keating argues that economics is central to the relationship between constituent diplomacies and Requejo and Kincaid suggest ethnic and cultural background play a more vital role in this process, Cohn et al. (1996) argue that regional linkage is more important than economics; though

regional constituent diplomatic relationships are bound by certain commonalities (be they economic or cultural), region is the most consistent link between the constituent units in these relationships in their opinion. In fact, though similarities exist between regionally linked jurisdictions, Cohn et al. posit that there are general differences that constituent units must work through as parties to constituent diplomatic relationships (1996, 110).

Petter (2006) suggests that Canadian, particularly British Columbian, constituent diplomacy became very active in recent decades for several reasons. The economic influence of globalization as well as economic integration of the Canadian American economies has put immense pressure on the provinces (which have open economies) to use constituent diplomacy to participate in foreign trade (Petter 2006, 13). The more the Canadian economy becomes intertwined with the American economy, the more the provinces feel they must use constituent diplomacy to trade, and to engage with, other nations (including the U.S.) on their own, to maintain their open door economic policies. Petter suggests other minor causes, but clearly believes that the growth of constituent diplomacy in Canada is the result of economic influences.

Cohn et al. (1996) discuss two types of constituent diplomatic relationships that are relevant to this thesis. These are regional constituent diplomacy and a subset of regional constituent diplomacy called simple regional constituent diplomacy. Keating (2000) generally supports these classifications. Regional constituent diplomacy occurs when economically linked constituent units such as provinces and states form a constituent diplomatic relationship. Keating focuses on this form as the most important type of regional constituent diplomacy. There are also those constituent units that are geographically connected—these constituent units are brought together by the fact that

there are no natural barriers such as large bodies of water that divide them. These constituent units are brought together because they are physically located in the same region of the world (PNWER would fall into this category). This subset of regional constituent diplomacy is called simple regional constituent diplomacy. It is this particular type that is the focus of the research question of this thesis. This is the focus of the research question of this thesis.

Cohn et al. (1996) use the example of Pacific Northwestern constituent diplomatic relations, specifically in British Columbia, to illustrate various aspects of this type of constituent diplomacy as it manifests itself in various cases, including PNWER. Focusing on policy phases in British Columbia's history since the 1940s, Cohn et al attempts to give the term "constituent diplomacy" a more rigid definition by discussing primary actors and mediating actors. Understanding these terms is not essential to understanding the crux of Cohn et al.'s article, which is that constituent diplomacy can be a limiting form of foreign policy—for example, individuals come to expect more activity from the constituent units (i.e. provinces) than they do from the federal government. Cohn et al. use PNWER as an example of a limited constituent unit: while PNWER has been successfully set up, there are no plans for PNWER's constituent units to create a strong enough institution that the constituent units will outperform the federal government in the foreseeable future. In this way constituent diplomacy is a very discrete and constrained lens through which to view foreign relations.

### **1.3 Research Questions of Thesis**

The focus of this thesis is constituent diplomatic institutions, as illustrated by the Water Policy Working Group (WPWG) of the Pacific NorthWest Economic Region (PNWER). The WPWG, like the other working groups stemming from PNWER, has on its

docket many topics related to water policy in the Pacific Northwest. This thesis emphasizes the recent work of the WPWG with regards to the Columbia River Treaty (CRT, or the Treaty) in preparation for what will be a highly important and high profile negotiation in 2024 of this often-controversial document. The WPWG is a regional, transborder institution. Its work on the CRT is instructive with respect to the effectiveness and functionality of this form of institution.

The research questions that I have chosen to focus on are as follows:

- I. What was the role of sub-state governments in the original Columbia River Treaty negotiations? What effect has the historical legacy of the Treaty negotiations left on constituent diplomacy today?
- II. What role does constituent diplomacy play within PNWER with respect to the upcoming Columbia River Treaty renegotiation? How does PNWER's governance model impact the effectiveness and functionality of constituent diplomacy?

In the context of the second research question, governance is defined as the “concept...that governments are increasingly interdependent with other public and private actors—governance processes therefore require that actors seeking mutual gains find ways to coordinate their efforts” (Clarke 2007, 57). Effectiveness is defined as, “[t]he degree to which something is successful in producing a desired result; success” (Oxford University Press, 2015), and functionality is defined as, “[t]he quality of being suited to serve a purpose well; practicality” (Oxford University Press, 2015).

#### **1.4 Contributions of Thesis**

Water is a very important policy issue. The presence of water, or lack thereof, ensures the survival of all life. With water resources becoming scarcer every year, water boundaries and water rights are topics of increasing importance. Studying the negotiation process that

leads to the treaties that govern these water boundaries and the distribution of water rights is more relevant than ever. Studying past failures and successes can help guide future actors in water boundary negotiations down better paths.

Another contribution is that the thesis delves into previously unexplored perspectives of PNWER Water Policy Working Group insiders regarding the WPWG's role in the regional, transborder constituent diplomacy of the Columbia River Treaty; these perspectives are studied through a series of interviews with committee members.

Also, interviews are used to examine the operation, challenges and opportunities related to the PNWER organization. Prior to these interviews, little information was known in the public domain about the functional operation of PNWER. The limited information previously available, largely on the PNWER website, was often outdated. This thesis contributes original information with greater background and depth about the daily operations of PNWER than available in existing documents. PNWER is useful as a case study into the operations of similar regional organizations because currently little is known about how such organizations are run. If more is known about regional organizations like PNWER, more can be done to ensure that they operate in the most efficient and effective manner, and to ensure that they remain useful in their operations.

## **1.5 Methods**

Because a case study is limited to one specific example of a phenomenon, ““depth” of the analysis” is possible, “where depth can be understood as empirical completeness and natural wholeness or as conceptual richness and theoretical consistency” (Ballinger 2008, 68). Deep analysis is important when a topic is understudied, such as PNWER. High conceptual validity—the measure of how great the contribution of data gathered from particular research will be—can be attained through the individual analyses of case studies

(Ballinger 2008; George et al. 2005). Conceptual validity can also provide the ability to test concepts that are often hard to define across different political contexts (George et al. 2005). Federalism is one such concept, which as demonstrated later in this paper, is defined differently in various contexts, making the ability to test concepts important.

Due to the historical and comparative nature of certain aspects of the research questions, document analysis was chosen as part of the qualitative research process. Documents, both historical and secondary, bear information that could not be conveyed otherwise; the writer of the document can tell the reader information that they would not be able to attain otherwise (Prior in Givens 2008; Ballinger 2008). For researchers, documents can fill in many of the gaps in information about a subject or about history that interviews leave open. Documents are also a source of unmined or unapplied data which may have been or appeared to have been irrelevant to research conducted in the past, but which is pertinent to the current research. Secondary and historical resources were located using the University of Saskatchewan library and library search engine, Google and the Toronto Public Library System search engine. These sources were assessed using a note taking method, followed by a summary of each source (Prior in Givens 2008).

An ethics waiver was obtained from the University of Saskatchewan ethics office before embarking on the interview process. Using a list of Delegate Council members and a list of names associated with the WPWG for 2011-2012, I contacted legislators, non-elected public sector members, and members of the Secretariat. Purposive interviewing was used—in particular stakeholder sampling. Purposive sampling was advantageous in this instance because random sampling of individuals would not have yielded the information sought for this thesis (Ballinger 2008). In qualitative research, there are often



instances where individuals selected via random sample will not have the knowledge that is sought—“one well-placed articulate informant will often advance the research far better than any randomly chosen sample of 50” (Ballinger 2008, 697). Despite interviews being confidential, the response was limited; surprisingly, many declined on the basis that they felt they did not know enough about the WPWG. This response in and of itself is an instructive point on the nature of the organization as it implies a less-than-comprehensive understanding by participants. The five respondents interviewed all attended WPWG meetings, had varying degrees of knowledge on the working group, and came from the elected public sector (some were on the Delegate Council), non-elected public sector, and Secretariat. A list of questions was used to begin a dialogue with interviewees about the efficiency and effectiveness of the WPWG. The interview research was supplemented with analysis of primary (including PNWER website) and secondary documents related to PNWER and its WPWG.

The first set of research questions was examined using historical and secondary sources. The second set of research questions were answered through semi-structured telephone interviews, which were conducted between May and August of 2013. The author decided that this mix of document analysis and original qualitative research obtained through interviews provided the greatest chance for confirmation of data (triangulation) between sources (Evans et al. 2002, 90). Triangulation was important because the sample size of those interviewed was significantly small enough that confirming data between multiple sources provided the optimum scenario for accurate results.

## **1.6 Organization of Thesis**

This thesis is organized into four chapters. This first chapter is an introduction to the main topics involved in the research questions along with the methodologies used in this thesis.

Chapter two focuses on the first set of research questions:

What was the role of sub-state governments in the original Columbia River Treaty negotiations?

What effect does the historical legacy of the Columbia River Treaty negotiations have on constituent diplomacy today?

This chapter analyzes existing sources in an effort to seek answers to these questions.

Chapter three presents an analysis of interviews conducted with individuals associated with the WPWG, as a means of delving into the second set of research questions:

What role does constituent diplomacy play within PNWER with respect to the upcoming Columbia River Treaty renegotiation? How does PNWER's governance model impact the effectiveness and functionality of constituent diplomacy?

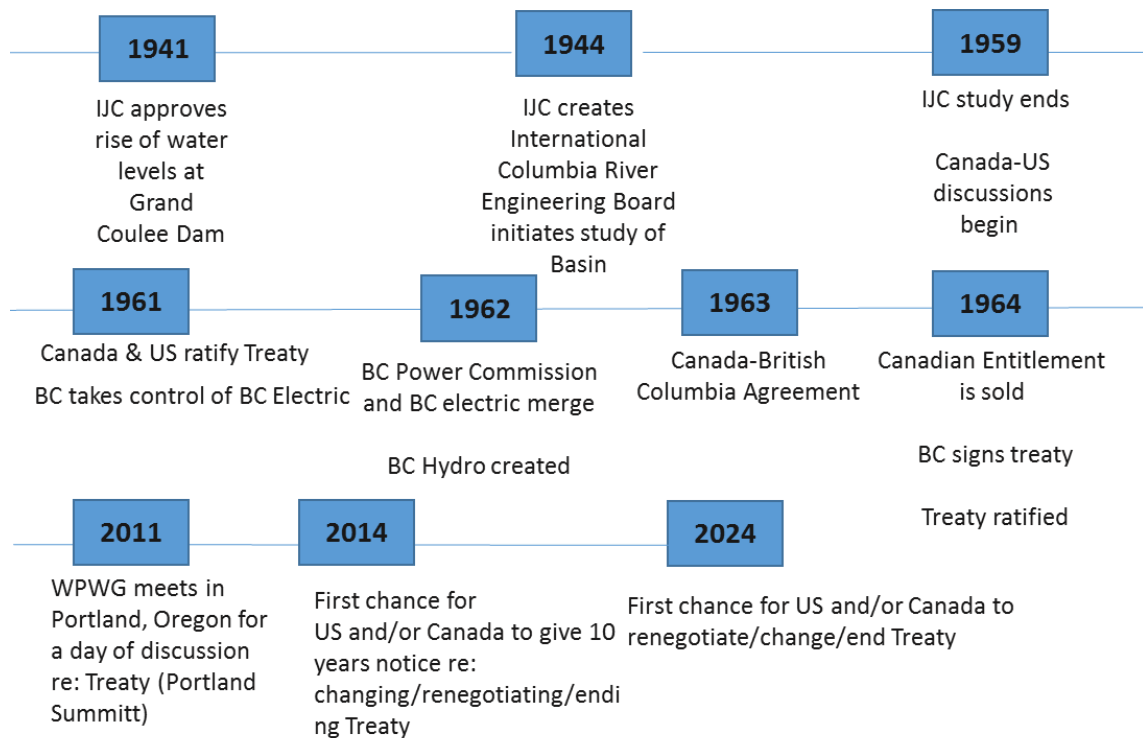
Chapter four is the conclusion where suggestions for future research and a final summary of the contributions of this paper are located. The thesis has been organized in the manner described above so as to provide the most fluid map for the audience of this research.

## **CHAPTER 2: Sub-Unit Diplomacy in Relation to the Columbia River Treaty**

In order to understand constituent diplomacy in the context of institutions such as PNWER, it is important to understand the historical and modern-day actors involved in the CRT, PNWER, and the federal and sub-state governments in Canada and the United States. Many of the federal and sub-state actors involved in the historical negotiation of the Treaty are the same today, and indeed are the same actors represented on the Water Policy Working Group at PNWER. This chapter will focus on the role of sub-state governments in the original Columbia River Treaty negotiations, the impact of federalism—defined as a form of government wherein the federal government and substate governments share power (Stuart Mill 1861)—on these negotiations and the effect the historical legacy of the Treaty negotiations has left on constituent diplomacy today.

The Columbia River Treaty is one of the core topics addressed by the WPWG. In this chapter, I will outline the history of the Columbia River Basin prior to ratification of the Treaty in 1964. I will then move to outline the history of the development of the Treaty from 1959 with the findings of the ICREB through BC Premier W.A.C. Bennett’s “Two Rivers Policy”, to Treaty ratification in 1964. I will then outline the process of Treaty ratification and the process of Treaty renegotiation, and discuss the operating procedures of the Treaty. After this is complete, I will outline areas of dispute between Canada and the US regarding the Treaty, and the methods and means that have been developed to handle such disagreements. I conclude the Treaty discussion by outlining the Treaty review process for the United States and the proposed Treaty changes suggested by the United States, and outlining the Treaty review process for Canada and the Canadian suggestions for a revised Treaty. The chapter will demonstrate that sub-state governments, specifically the B.C. government, played a vital role in Treaty negotiations. Further, it will

be argued that the differing federal structures used by Canada and the United States influenced how each country's sub-state governments performed during negotiations. My final argument will be that the past Treaty negotiations are relevant to constituent diplomacy today because of modern-day and future Treaty negotiations and ongoing Treaty implementation. To provide a convenient summary of the key events, Figure 2-1 at the beginning of section 2.1 presents a timeline of the Treaty's negotiation and future stages.



*Figure 2-1. Columbia River Treaty Timeline (Author, 2016)*

## 2.1 The Columbia River Treaty

The Columbia River is the fourth largest river in North America, with an “estimated average annual flow at its mouth of about 198 million acre-feet (Maf)” (Hyde, 2010, 2). The International Joint Commission (IJC) estimates the flow of the Columbia

River is 265,000 cubic feet per second (cu ft/s) or 7,500 cubic meters per second (m<sup>3</sup>/s), with a maximum output of 1.24 million cu ft/s (35,100 m<sup>3</sup>/s) and a minimum output of 12,100 cu ft/s (300 m<sup>3</sup>/s). These daily output measurements come from the International Joint Commission, which was established by the Boundary Waters Treaty, 1909, and “provides the principles and mechanisms to help resolve disputes and to prevent future ones, primarily those concerning water quantity and water quality along the boundary between Canada and the United States” (International Joint Commission 2013b).

Beginning in British Columbia, the upper Columbia River Basin also encompasses seven American states—including most of Idaho, half of Oregon and Washington, and parts of Wyoming, Utah, Nevada and Montana (Hyde 2010, 2)<sup>1</sup>. The upper Columbia River Basin measures a total area of somewhere between 258,000 square miles (668,000 square kilometers) (International Joint Commission, 2014) and 259,500 square miles (697,000 square kilometers) (Hyde, 2010, 2) across the Canadian and American Pacific Northwest, depending on whether Montana, Idaho, Utah, and Wyoming are included. An estimated 15 percent of the basin belongs to Canada, with the American Pend Oreille and Kootenai Rivers providing approximately 8 percent of additional flows (Hyde, 2010, 2; Paisley, 2013; International Joint Commission, 2014) as they meet the Columbia River. This is an interesting aspect of the transborder issue: much of the water originates in Canada, but its areal impact is largely in the United States.

In 1944 the IJC became the first international organization to begin investigating the transborder issues surrounding the Columbia River Basin (International Joint Commission, 2014). The IJC is composed of six members—three American and three

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<sup>1</sup> International Joint Commission, Columbia River Information (2014) lists Washington and Oregon as the states through which the Basin runs.

Canadian members (White in Cosens 2012, 52), who are “appointed by the highest level of government in each country, but once appointed they do not represent the national governments; they operate at arm's length” (International Joint Commission 2013a). IJC intervention in the Basin has occurred over time; for instance, “in 1941, the IJC issued an order of approval to raise water levels at the boundary behind the Grand Coulee Dam” (International Joint Commission 2014). Upon approving this request, the IJC created the International Columbia River Board of Control as a form of institutional oversight for the Columbia River Basin region. Two members sit on this board—“[o]ne member each from Environment Canada and the U.S. Geological Survey...which keeps the Commission apprised of stream flow and water-level data on both sides of the international boundary” (International Joint Commission, International Columbia River Board of Control Mandate 2014) - and the board presents findings annually to the IJC.

According to Swainson, the federal governments of Canada and the United States, along with the sub-state governments of both nations, were conducting their own studies into ways that the Columbia River Basin could be developed prior to and simultaneously with the ICREB study (Swainson 1986, 245). These studies resulted in the IJC’s approval of two American dam projects along the Basin (Docket 44A 1940). The Grand Coulee Dam—built between 1933 and 1942— and the Bonneville Dam—built between 1934 and 1937— were not the only dams approved during this time period. The Corra-Linn Dam, proposed and built by West Kootenay Power and Light Company Ltd. of Canada, was approved in 1938.

In 1944, the IJC was asked to “determine "whether a greater use than is now being made of the waters of the Columbia River System would be feasible and advantageous.””

(Hyde 2010, 3). The IJC created the International Columbia River Engineering Board (ICREB) to answer this question (IJC 2012). Many scholars reference the ICREB as the beginning of in-depth study into development of the Basin (Mouat in Cosens 2012, 16; Muckleston 2003, 13).

## **2.2 Development of the Treaty**

In 1959 the ICREB presented the conclusions of its 15 year study to the IJC. The IJC then presented the results to Canada and the United States. This commenced 11 years of discussions and negotiations between Canada and the United States (Swainson 1986, 245). Among the most important highlights in the 1959 ICREB report was the suggestion that a dam be built at Arrow Lake in BC. The report presented the potential costs and benefits of building the dam at the lower portion of Arrow Lake (Low Arrow) or the upper portion of Arrow Lake (High Arrow), but did not present a conclusion as to which was the best location for the dam project.

The ICREB noted that if the dam were built at High Arrow, there would be devastating results for the local environment and surrounding towns. On the other hand, Lower Arrow, while preserving the environment and providing nearly no impact on the surrounding area, would cut down on the amount of power storage it could provide. Ultimately, and despite the warnings, Canada, British Columbia and the United States all agreed to build what would become the Keenleyside Dam at High Arrow Lake. As will be discussed later in this chapter, this decision would lead to disastrous results from the perspective of local British Columbian residents and from an environmental and economic perspective.

The federal governments of Canada and the United States came to an agreement regarding the Treaty and signed the Treaty in 1961, but British Columbia Premier W.C.

Bennett would not sign the Treaty into ratification until 1964 (Mouat 2012, 25). For three years following the signing of the Treaty, the provincial government was able to review the Treaty and ensure it was appropriate for British Columbia.

In order to understand the role of British Columbia in the CRT negotiations, it is important to know that when the Constitution Act of 1867 was written, there were certain natural resources for which jurisdiction was not given. Water was one of these resources that Articles 91 and 92 failed to delegate to provincial or federal governmental authorities. It has been traditionally held in the time period since 1867 that water within provincial boundaries, unless the subject of a treaty negotiation, is under the prevue of the provincial governments. When treaty making is involved, the Constitution states:

Treaty Obligations 132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

(The Constitution Act, 1867, 30 & 31 Vict, c 3, Section 132)

Section 132 has faced challenges before the Supreme Court of Canada over time. Because Section 132 does not outline which specific Treaty powers are “necessary or proper for performing the Obligations of Canada or of any Province thereof” (The Constitution Act 1867, 30 & 31 Vict, c 3, Section 132), the Supreme Court determined prior to the 1960s, through a series of decisions, that “the implementation of treaties whose subject matter falls within provincial jurisdiction requires the participation of provincial governments” (Lecours in Michelmann 2009, 122), including “the consent of provinces” (Lecours in Michelmann 2009,133). Because the Columbia River Basin ran through



British Columbia, Premier Bennett was able to participate in negotiations of the Treaty as well as delay ratification of the Treaty by refusing his signature.

For several years prior to 1961, Premier Bennett had been campaigning to develop the Columbia River and the Peace River with the idea of producing excess hydroelectric power. The provincial government would then funnel this excess power to the flourishing lower mainland of Vancouver and parts of British Columbia with developing industry (BC Ministry for Energy and Mines, 2014). Bennett called this his “Two Rivers Policy”, and felt the policy was desirable because it involved the development of the Columbia River Basin and Fraser River Valley, which run through geographically and economically distinct parts of the province (BC Ministry for Energy and Mines, 2014). Lack of authority over the private power companies in British Columbia, as well as a dearth of public funding for the dams that would be required to fulfill the policy had been the final roadblocks Bennett faced in implementing the “Two Rivers Policy”. In 1961, the BC government took control of a publicly owned and controlled power company called BC Electric, merging it with the provincially operated BC Power Commission one year later, and as a result of this merger, a new crown corporation was created called BC Hydro and Electric Authority (BC Hydro). This new crown corporation gave Premier Bennett and the provincial government the authority to control the provincial power grid. The combination of provincial powers and a crown corporation to effect economic development was a powerful combination for Premier Bennett.

### **2.3 Treaty Ratification**

In 1963 the federal government handed most of the Treaty management and implementation over to British Columbia, given the political authority and implementation

capability of the province. As a result, the “CRT has been implemented by executive act and principally by executive acts of the provincial government and its agent British Columbia Hydro (BC Hydro), the designated Entity for Canada under the Treaty” (Bankes et al. 2012, xi). Along with the responsibilities the federal government transferred to British Columbia, Premier Bennett gained the right to any payments or potential revenue previously negotiated by the Canadian government. This included the \$64.4 million for assured flood control until 2024 to be paid by the American federal government, and the Canadian Entitlement (Bankes et al. 2012, 6). The federal government negotiated the Canadian Entitlement prior to 1961 when the initial Treaty signing took place. It ensured that Canada would be “entitled to half of what is called the ‘downstream power benefits.’ The downstream power benefits are defined by determining the difference in hydroelectric generation in the United States with and without the use of Canadian storage” (Shurts in Cosens 2012, 198). As discussed below, these downstream power benefits became controversial when BC Hydro sold for thirty years the rights to the additional power provided by the Canadian Entitlement. With a government-run hydro corporation, Bennett was closer than ever to achieving his “Two Rivers Policy”; however, he needed more revenue to fund the construction of dams along the Peace River. The Canadian Entitlement was the perfect source of revenue to fund the Peace River dams; indeed, the major source of revenue funding the “Two Rivers Policy” is the Canadian Entitlement. The Canadian Entitlement itself would not provide income to the province; selling the power benefits produced and given to BC through the Canadian Entitlement provided the necessary and immediate funds. Shurts (in Cosens 2012, 198) describes how BC sold the rights to the Canadian Entitlement power benefits to a group of American utility companies:

[T]he province promptly sold its share of the downstream power benefits in 1964 for thirty years at what was determined to be a net present value \$254 million...to a consortium of utilities in the United States organized as the Columbia Storage Power Exchange (CSPE), who then largely sold the rights to this power south to California.

The Canadian Entitlement benefits were originally sold to the CSPE for \$254 million dollars to be delivered over a thirty year period. When this agreement was made, British Columbia presumably saw this as a fair value for the downstream power benefits generated by the Canadian Entitlement. The last of the money due for the Entitlement was paid in 2003 (nine years after the initial projections), but the delivery of the benefits to the CSPE continues. The Canadian Entitlement has substantially increased in value since 1964. In 2014, the Canadian Entitlement was valued at \$150M/year by British Columbia Ministry of Energy and Mines, which is over half the overall total payment BC received from 1964-2003 from the CSPE for use of the Canadian Entitlement's downstream power benefits. This number was far greater than the original sales price due to the fact that power costs and the scarcity of power sources have increased. In effect, the United States gains the full payment for the power every 18 months, which is a massive windfall for the United States, and an economic loss for BC and Canada.

With all of the aspects of his "Two Rivers Policy" in place, in 1964 Premier Bennett was prepared to sign the Treaty. Three years post- initial signing of the CRT and with the original signatories no longer in power, the CRT was ratified at the International Boundary at Blaine, Washington and Surrey, British Columbia by Premier Bennett, Prime Minister Lester B. Pearson and President Lyndon B. Johnson on January 17, 1961 (US Army Corps of Engineers, et al. 2012; BC Ministry of Energy, Mines and Plutonium

2012). Upon ratification, Canada commenced construction of the three dams it had agreed to build under Treaty terms. This satisfied the Treaty provision for Canadian storage, that is the 15.5 Maf that Canada provides in the form of the Mica, Arrow, and Duncan Dams (The Columbia Treaty Article I; Article II), which were built under the definition of a dam as “a structure to impound water, including facilities for controlling the release of impounded water” (The Columbia Treaty, Article I). As a result, the Duncan, Keenleyside, and Mica Dams exist today, as well as a fourth, the American-built Libby Dam in Montana that per Treaty terms America had the option to build with tributary access in Canada (Hyde 2010, 2).

While the BC government had considerable influence over the negotiations, the same was not true for the American state governments; in the United States, treaty negotiation is the responsibility of the Executive Branch (Bankes et al. 2012, 31). “The Senate may appoint observers to negotiations and has done so for negotiations concerning environmental topics and arms control” (Bankes et al. 2012, 31), however it is generally the State Department that negotiates treaties on behalf of the Executive Branch (Bankes et al. 2012, 31). Relative to the BC government, American states had very little, if any, involvement in the original negotiations.

Premier Bennett was able to facilitate the merger of power companies into one provincial crown corporation. Further, BC clearly had more power than the Pacific Northwestern states to influence the outcome of the Treaty during its original negotiation, seen in the 50 percent revenue participation right south of the border. In the end it can be argued BC did not capitalize on this advantage by virtue of the early sale of rights; however, it appears clear the negotiated outcome was in BC’s favour.

The American states did not and could not wield the same power as British Columbia for two reasons. First, the American states did not enjoy the same constitutional powers as the Canadian provinces. Second, the U.S. has separations of powers that do not exist in Canadian federalism; for example, legislatures provide checks and balances to the power that governors can hold in American states.

The parliamentary governance model that Canada kept as one of many traditions passed on from the British provides the infrastructure for the election of a powerful leader such as Premier Bennett. The provincial leader of the party with the most votes generally becomes the Premier after the election has occurred. Premiers are not only the leader of the provincial executive branch in Canada, they are also members of the provincial legislature, which presents further opportunities for increased power. As a member of two fundamental branches of government who participates in the lawmaking process in both capacities, a premier has the potential to exercise considerable influence over the policy making of a province. It was his dual role as executive leader and member of the legislature that enabled Premier Bennett to push through his Two Rivers policy.

In the U.S., the separation of state legislatures from the executive offices of governor ensures that a single individual cannot control both the laws that are passed and the executive seat of power in the state government. Governors can veto legislative action, but state legislatures are able to make law undisturbed by the executive branch. There is never any circumstance in the U.S. where state leaders partake in the legislative process in the way that premiers both legislate and lead in Canada.

McMillian notes that “constitutional rules and divisions of power between central and non-central governments play a great role in shaping constituent diplomacy” (2012,

102). In the “US states and governors do not have the largest degree of international activity, especially when compared with Canadian provinces and premiers” (McMillian 2012, 102); in Canada the relationship between the sub-state governments and federal government with regards to constituent diplomacy has been set up in such a manner as to bestow great power on the sub-state units (McMillian 2012, 102). Provincial participation and consent during the treaty negotiation process regarding provincially relevant issues (Lecours in Michelmann 2009, 133) is an example of the large degree of power sub-states hold in Canada. The 1961 Canada-British Columbia Agreement is another instance where the Canadian federal structure has allowed for a broad transfer of treaty powers and responsibilities from the federal to a provincial government.

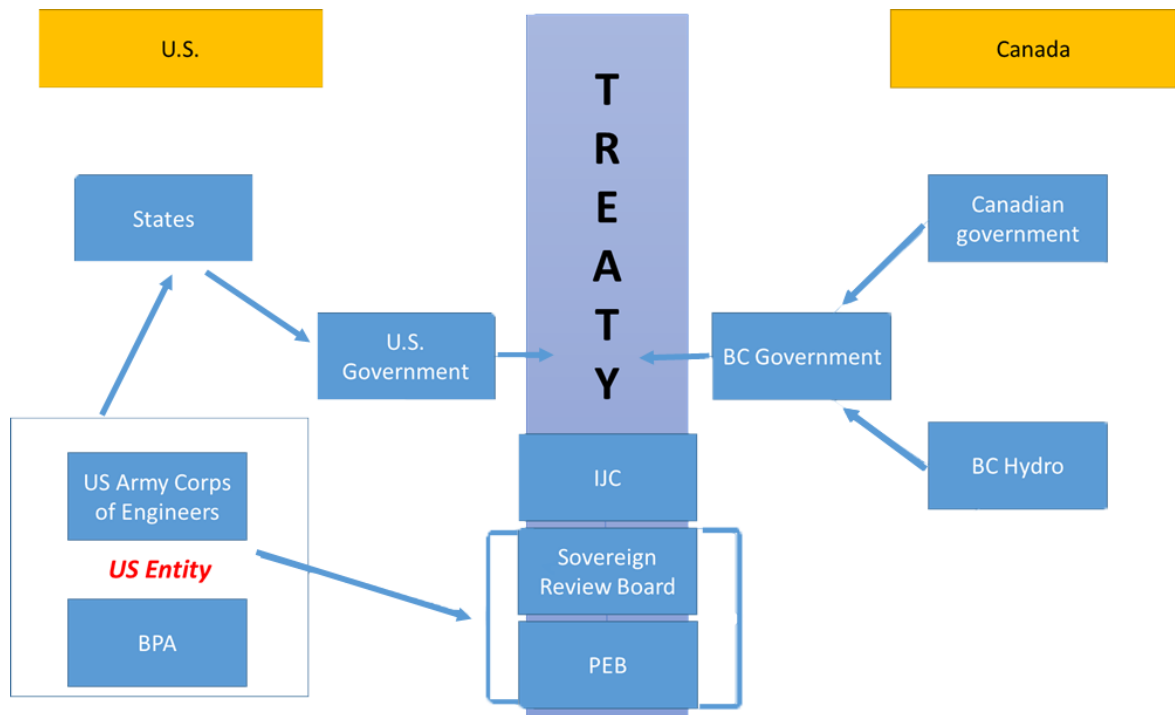


Figure 2-2. Columbia River Treaty Actors (Author, 2016)

As Figure 2-2 suggests, the American approach to Treaty operation takes a different form. There are two organizations that make up the U.S. Entity, which is

responsible for overseeing the proper enforcement of the CRT (Muckleston 2003, 21)—the Bonneville Power Administration (BPA) and the U.S. Corps of Engineers (USACE). These bodies are in charge of implementing the Treaty from the American side because of the vagaries of the federal-state power sharing relationship under the American Constitution regarding trans-border water disputes (Muckleston 2003: 21). The implementation authority of these groups becomes subject to judicial decision review; a series of intricate and complex Supreme Court decisions have led to a regional portion of the USACE holding the responsibility of flood control and hydroelectric power production (Muckleston 2003, 21; Vogel 2007, 354).

While BC Hydro serves as the Canadian Entity, which oversees implementation of the Treaty, the Bonneville Power Administration (BPA), which was created by an act of Congress in 1937, and has been a part of the US Department of Energy since 1977, is responsible for the marketing and transmission of all hydroelectric power that results from the CRT (Muckleston 2003, 21). This delegation of responsibilities between two federal agencies in the United States has created a much more dynamic and difficult system of information dispersal, and overall efficiency. This is especially evident when compared to Canada's single entity, provincial based BC Hydro (Personal Interview; Vogel 2007, 354).

The provision for an American-built Libby Dam was a point of contention during negotiations, as the location of the dam diminished already potentially questionable economic benefits from the Libby Dam project (Muckleston 2003, 14). This dam, to be built in Montana, would be in America, but have optional tributary access to Columbia River waters in Canada (Hyde 2010, 2; Muckleston 2003, 14). Despite increased pressure on the hydroelectric output of the Canadian portion of the Basin due to such a proposed

project, Canada would not receive any economic or power benefits as a result of agreeing to such a proposal (Muckleston 2003, 14) because the economic benefit had already been sold by BC in the original Bennett negotiations. The Libby Dam was not part of the Treaty that was negotiated in 1961; it was only in the 1964 Treaty that was ratified that the Libby Dam received approval by Ottawa, British Columbia, and the United States (Muckleston 2003, 14). No additional benefit was delivered to Canada with this dam.

An assured flood control protocol at the end of the Treaty ensures that “[i]f the United States entity should call upon Canada to operate storage in the Columbia River Basin to meet flood control needs...such call shall be made only to the extent necessary to meet forecast flood control needs...that cannot adequately be met by flood control facilities in the United States of America”, with a long list of conditions following (Columbia River Treaty: Protocol, Annex to Exchange of Notes, Article I). The Canadian Entitlement and assured flood control are the only aspects of the Treaty that will expire in 2024 if no action is taken by any entity.

The key Treaty dispute mediating body is the Permanent Engineering Board (PEB), which was established by the Treaty, “consisting of four members, two to be appointed by Canada and two by the United States of America” (Columbia Treaty, Article XC), with the first appointments coming by the three-month mark after ratification. The job of PEB is to “assemble records of the flows of the Columbia River and the Kootenay (Kootenai) River at the Canada-United States of America boundary” (Columbia Treaty, Article XV). These data let the Canadian and American entities know if there is any anomaly in the standard hydro and flood control operation plans, and when needed to inform those entities of recommendations for remedying these anomalies (Article XV).



In terms of operational management, the PEB is also responsible for “assist[ing] in reconciling differences concerning technical or operational matters that may arise between the entities; mak[ing] periodic inspections and require reports as necessary from the entities with a view to ensuring that the objectives of the Treaty are being met”. The PEB is also responsible for “report[ing] on the results being achieved under the Treaty” (Columbia River Treaty 2014/2024 Review), and when any of the entities request it, the PEB must investigate any matter under the Treaty (Columbia Treaty, Article XV). All reports submitted by the PEB must be accepted as “prima facie evidence of the facts therein contained and shall be accepted unless rebutted by other evidence” (Article XV).

The administrative and procedural directives of the PEB are laid out in the Treaty (Article XV). The PEB is not neutral, but bipartisan. Shurts (in Cosens 2012, 201-202) notes that the PEB has been called upon to act in its capacity as a mediator between the two entities on very few occasions. The PEB reports from the past decades serve as an important historical record as the U.S. and Canadian Entities configure their respective proposals in 2014. The PEB reports are important data from which both entities can extract historical information about the impact of the CRT on the Columbia River Basin.

## **2.4 Canada-US Areas of Treaty Dispute**

There are several areas of dispute surrounding the Treaty. In Canada, there has been a significant loss of high value agricultural-forestry land resulting from dam construction. Many members of the Canadian public feel that while Americans have had guaranteed purchase of water for sixty years since 1961 under the Treaty, Canadians in the Kootenay region of BC have primarily suffered losses, including the loss of valuable agricultural land (US Army Corps of Engineers, et al.; BC Ministry of Energy, Mines and Plutonium

2012; Bankes et al. 2012). At the same time, in the United States, many members of the general populous feel that Canada has experienced undue economic benefits as a result of the Treaty through the sale of water that ultimately would have flowed in to the US. These economic benefits include the Entitlement power to the water, in which they have been guaranteed payment from the Americans for water access for the past sixty years (US Army Corps of Engineers, et al. 2012; BC Ministry of Energy, Mines and Plutonium 2012).

Eve Vogel provides one American view of the value of the Canadian Entitlement. Vogel notes that the CSPE was “a consortium of the mid-Columbia Public Utility Districts and their customers, backed financially by the BPA” (Vogel in Cosens 2012, 294). It is Vogel’s opinion that the CRT was more favourable towards Canada, and the portion of the Treaty most often singled out when this argument is made is the Canadian Entitlement. Similarly, Kevin Kirkpatrick (2013) suggests that “liberalization”, or “reintegration” of the Canadian and American wholesale power markets is an under-analyzed area of law and political science (321), and argues since this “reintegration” has occurred, the Canadian Entitlement should be recalculated, because when this aspect of the Treaty was negotiated, it was assumed that the flood protection provided by Canada to the United States would be equal to the Entitlement.

Kirkpatrick suggests that the first step in recalculation is asking if the payment of the Entitlement is still approximate to the benefit received by the United States. Vogel’s objection is more simple: Canada sold the Entitlement to a consortium of local Pacific Northwest power companies and the terms are simply a binding contract. The power companies were backed by the BPA. The power was then sold to California. This would

have broken provisions of the CRT related to the Entitlement, except that the power was sold through a consortium (Vogel in Cosens 2012).

Jeremy Mouat (in Cosens 2012) writes about what he calls an often forgotten or ignored Canadian perspective regarding the Columbia River Treaty and Columbia River Basin. Mouat provides the most comprehensive and relevant account from a Canadian perspective on the Columbia River Treaty. (While the Canadian and American entities have published their own findings regarding their positions on what a renegotiated 2024 Treaty would look like from their points of view, historical accounts of the events that led up to the CRT that look beyond the more traditional account of cooperation are limited.) Mouat reports the British Columbian government suffered pressure from the American federal government on many levels. The British Columbian government, and to some extent, the Canadian government, faced a much larger government (the United States) wielding considerable power by virtue of size and economic clout. As a result, Mouat posits, the Canadian government (representing British Columbia), came out as the “loser” in the CRT negotiations. Eve Vogel also presents the CRT as the result of conflict between Canada and the United States (in Cosens 2012, 290-91), but instead of presenting an outcome where British Columbia was the disadvantaged party as a result of negotiations, Vogel views British Columbia as having “won a favorable Treaty by bargaining hard at a time when the United States was the more interested party” (Vogel in Cosens 2012, 291). These highly divergent views of history demonstrate why a clear understanding of CRT history and the creation of PNWER is so important, as well as highlighting the conflicting nature of the CRT.

## **2.5 The 2024 Treaty Review Process**

In the U.S., the Columbia River Treaty 2014/2024 Review (2014/2024 Review) is the process for the regional recommendations on the Treaty to U.S. negotiations. The review team is made up of the Sovereign Review Team, which consists of the four Pacific Northwest states, representatives of fifteen Native American governments, and representatives for eleven federal agencies (2014/2024 Review Website 2014). The other two participants in the 2014/2024 Review are the Permanent Engineering Board, which assists entities in the review process from an operational perspective, and the Sovereign Technical Team, which serves to aid the Sovereign Review Team in any technological capacity (2014/2024 Review Website 2014). Within the 2014/2024 Review alone, there are over thirty actors, representing thirty different interests. Not only do these disparate interests have to be taken into account during the recommendation writing process, the voices of the public commenters whom the 2014/2024 Review opens the document up for feedback during the working draft phase, and the voices of the government, must be considered during this process (2014/2024 Review Website 2014).

The Secretary of State and Executive Branch prepared the draft recommendations for approval (Wozniacka 2013). The document released to the State Department in December 2013 called for a renegotiated Treaty that focused on two key areas: a “fairer” (subjective from the American perspective) deal from the Canadian counterparts, and greater emphasis on the Endangered Species Act and climate change (US Draft Recommendations 2013). Ultimately, it is up to the State Department to decide if the United States will renegotiate the Treaty in 2024; currently the State Department is using the recommendations as the basis for a “federal policy review” regarding the Treaty (2014/2024 Review Website 2014).

Per the Canada-British Columbia Agreement of 1963, the federal government “transferred most Columbia River Treaty benefits, rights and obligations to British Columbia” (British Columbia Columbia River Treaty Review 2014), retaining its federal rights to approval, PEB membership appointment and Treaty signing. In the 2014 review process, the government of British Columbia represented the federal government of Canada in negotiations (British Columbia Columbia River Treaty Review 2014). The provincial government presented a list of fourteen alterations it would like to see made to an otherwise intact Treaty (BC Ministry of Energy, Mines and Plutonium 2014). After consultation with First Nations, environmental, community and other relevant organizations, BC Minister of Energy Bill Bennett released the document containing the fourteen changes Canada would like to see made to the intact Treaty. Important points on the list include the rejection of the American request that Canada pay for part of the infrastructure to ensure a greater emphasis on the Endangered Species Act in the Basin. The Canadian objection is that the Endangered Species Act is an American act—it is not international law (BC Ministry of Energy, Mines and Plutonium 2014). The second key point featured in the Canadian request for changes to the existing Treaty is that instead of allowing the Canadian Entitlement to lapse, the Entitlement remain as payment to Canada for continued use of the three dams along the Basin.

The original Treaty negotiations have left a lasting historical mark on constituent diplomacy today; the role that sub-state and federal actors assume in modern Treaty relations stem from these original negotiations. Sub-state actors, including federal and sub-state governments in Canada and the U.S., and members of PNWER are a vital part of the constituent diplomatic process. The differences in Canadian and American federalism

allowed for the powerful Premier Bennett to delay the ratification process and effectively negotiate for the funds he needed to complete his “Two Rivers Policy”. The short-sightedness of the sale of the Canadian Entitlement does not subtract from the fact that at the time Premier Bennett successfully negotiated for the terms he wanted.

### **CHAPTER 3: Columbia River Treaty: PNWER & the WPWG (1994-2015 & Beyond)**

In pursuing this research, the goal was to gain insight into the complex political relationship between Canada and the United States in the context of constituent diplomacy. More specifically, the hope was to understand how these two North American powers interact with one another beyond the often studied historical and contemporary points of contention such as the softwood lumber dispute. The intention of this chapter is use the case study of the PNWER Water Policy Working Group to assess how Canada and American sub-state governments work with one another to solve issues. The chapter focuses on two questions: What role does constituent diplomacy play within PNWER with respect to the upcoming Columbia River Treaty renegotiation? How does PNWER's governance model impact the effectiveness and functionality of constituent diplomacy? Drawing on documentary evidence and the results gathered from five telephone interviews with individuals associated with the Water Policy Working Group of the Pacific Northwest Economic Region, this chapter details current PNWER governance practices and then moves to argue that federal structures and governance can impact the effectiveness and functionality of constituent diplomacy.

#### **3.1 PNWER and Its Relationship to the Treaty**

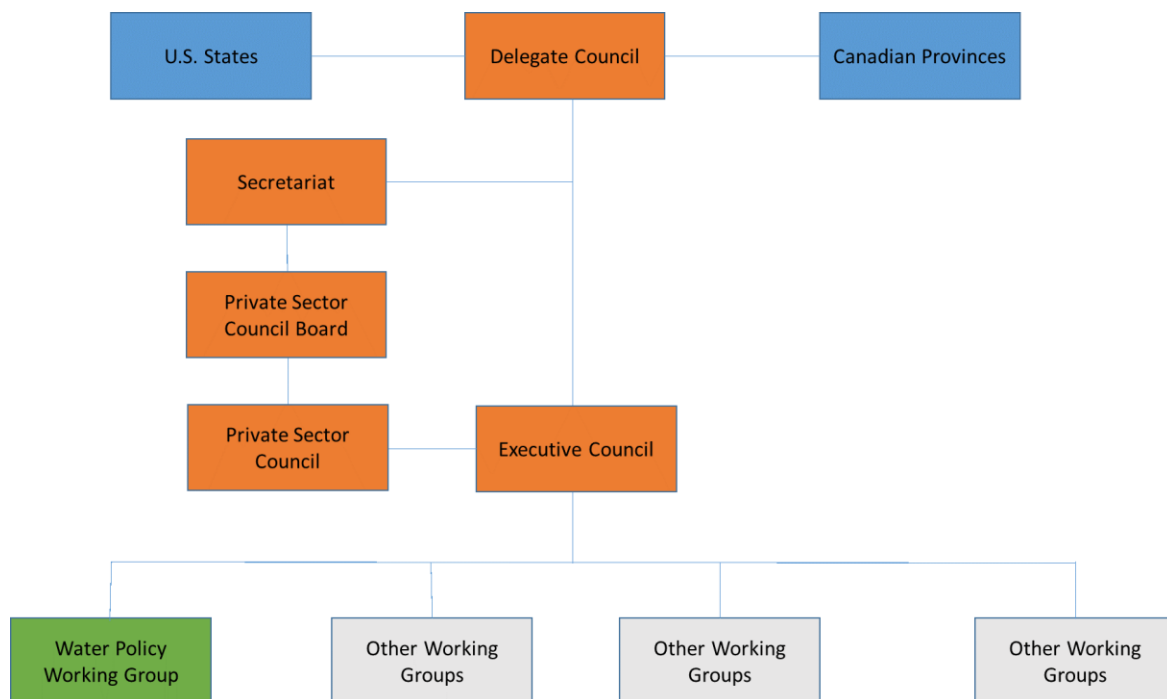
In this section I will outline in detail the history of the development and internal structure of PNWER, then the subgroups of PNWER, followed by a discussion of the Water Policy Working Group. The Pacific NorthWest Economic Region (PNWER) is a trans-governmental organization (Keohane, et al., quoted in Cohn, et al. 1996) that was created via statute in 1991 by the governments of British Columbia, Alberta, Oregon, Montana, Alaska, Washington and Idaho. These sub-state governments were part of an organization

called the Pacific Northwest Legislative Leadership Forum (PNLLF) at the time of PNWER's creation. PNLLF had been the brainchild of Alan Bluechel, a state senator from Washington who hailed from Canada. Bluechel had envisioned a regional meeting place for legislators to discuss common issues relevant to the Pacific Northwest (PNWER, 2014). In 1994, the Yukon Territory was voted in as a member of PNWER by the Executive Board, followed by Saskatchewan in 2008 and the Northwest Territories in 2009 (PNWER 2012a).

PNWER was created as a result of the “commonalities of geography, interests and identities amongst contiguous groupings of provinces and states that serve to encourage paradiplomatic activities” (Petter 2006, 7). Shared “interests and identities” (Petter 2006, 7) are based on economy and trade (Lecours 2009, 127). A set of goals for the organization has been created based upon these commonalities. PNWER's goals are centered on the economic expansion, political and collaborative success, and protection of regional resources (PNWER 2014). The mission statement of the organization is “[t]o increase the economic well-being and quality of life for all citizens of the region, while maintaining and enhancing our natural environment” (PNWER 2014).

Figure 3-1, which was created by the author of this thesis based on descriptions from the PNWER website, provides a visual representation of the organizational structure of PNWER. The founding body of PNWER is the Delegate Council, which was initially comprised of legislators. In 1993, the governors or premiers from each of the jurisdictions represented were added to PNWER and the Delegate Council (PNWER 2012b). Today, the Delegate Council consists of the governor or premier, as well as four appointed state or provincial legislators and their alternates for each of the ten jurisdictions (PNWER 2014).





*Figure 3-1. Organizational Chart of PNWER*

One of the roles of the Delegate Council is to compile the competing agendas of public sector groups in their jurisdictions into one cohesive agenda, which they bring to the annual PNWER meeting (PNWER 2012b). The Delegate Council is also responsible for ensuring that the working groups that meet during the yearly PNWER meetings function properly. PNWER Secretariat is the administrative branch of PNWER for the executive officers of the organization (PNWER 2012a). The Secretariat is comprised of a CEO and COO, Program Managers overseeing working groups, as well as various support staff. Based in Seattle, Washington, the Secretariat ensures that PNWER is operating in a functional manner (PNWER 2012a).

In 1994, private sector members were admitted to PNWER, making governance an important part of how PNWER is run. With the admittance of private sector members, and the creation of the Private Sector Council (PSC), PNWER strove to incorporate the greatest number of viewpoints possible into PNWER's structure. These private sector

members include non-profit organizations, non-elected members of the public sector, Non-Governmental Organizations and businesses. All private sector members belong to the Private Sector Council (PSC). The PSC provides a forum for private sector members to discuss issues related to working groups privately, in the same manner as the Delegate Council provides a closed forum for public sector members (PNWER 2012b). The PSC is intended to be the private sector counterpart of the Delegate Council. Each state or province chooses four board members to join a Private Sector Board of Directors (PNWER 2012a), with responsibility to manage the PSC. The Secretariat is responsible for oversight of the PSC and PSBD (PNWER 2014).

Decisions regarding the activities at all levels of operation at PNWER take place in the executive committee of PNWER, which is made up of a legislator and private sector board member chair from each member state or province, four governors or premiers (or their designated replacement), and the Executive Directors. The Executive Directors are comprised of a President and a First and Second Vice President, one each representing Canada and the United States (PNWER 2012a). The Executive Directors serve a one year term in leadership of PNWER.

PNWER is funded in three ways. Roughly a third of the revenue PNWER receives annually comes from the funds state and provincial legislators pay to belong to the organization. Another third of the revenue PNWER receives results from the funds private sector sponsors pay to belong to the organization, as well as private sector sponsorships. A final third of the money PNWER receives each year comes from public and private sector funding such as grants (PNWER 2014).

Working groups are targeted towards fourteen different areas including Transportation, Disaster Resilience, Water Policy, and Forestry, and may meet outside of the yearly meetings if the working group co-chairs deem it necessary (PNWER 2012b). One of these co-chairs always comes from the private sector or non-elected public sector, while the other is a public sector official (PNWER 2012a). An elected public sector official might include, for instance, a state senator or a state representative, and this elected public sector official might co-chair the Water Policy Working Group with a college professor specializing in hydrology.

Pending the discretion of the working group co-chairs, anyone is welcome to attend and participate in these meetings, including public sector working group sponsors, who may be engaged in the process via the co-chairs or the Secretariat (PNWER 2012b). Public sector officials and members of the PSC pay a membership fee to participate in PNWER and the organization's working groups. This fee is waived for members of PNWER belonging to sub-state and federal legislatures, including governors and premiers of member states and provinces (PNWER 2014a).

### **3.2 Advisory, Not Active Role**

What role does constituent diplomacy play within PNWER with respect to the upcoming Columbia River Treaty renegotiation? During the interview process, it became apparent through the feedback of the respondents that PNWER does not take independent action with respect to studying the Basin and Treaty. None of the five respondents was able to answer definitively any of the questions regarding PNWER-initiated activities. One respondent said, "PNWER does work in other areas where they make recommendations, but water policy is intentionally not one of those areas" where studies are commissioned and recommendations are made. Another respondent said, "PNWER does not work in any

advocacy role, except in ensuring that everyone has access to reliable and relevant information”. This respondent put forth a situation in which PNWER hypothetically commissioned studies about an issue as one where PNWER would be engaged in advocacy, outside of the organization's mandate. While one respondent believed that while PNWER did commission studies about the Treaty and Basin area, they could not provide any examples of such studies. Another respondent was unsure if any such studies existed due to the fact that this interviewee did not consider themselves a member of the WPWG and therefore was unable to comment authoritatively on most matters related to that working group’s specific operations.

From research done prior to the interview process, the anticipation was that PNWER’s involvement in data collection, study collation and result distribution would be greater than the interview results revealed. The prior history of organizational leadership seen in original negotiation, where various ad hoc groups aided the process, was not supplanted or enhanced by the establishment of the WPWG based on the respondents’ answers. Additionally, it is my evaluation that some respondents overestimated the importance of the research and data conducted and collected by PNWER. On the other hand, there was strong corroboration of PNWER’s role as a leader and partner in ensuring that information is dispersed in an equitable and efficient manner to all stakeholders.

The narrow role for the Working Group on the Treaty reflects the limited role that the Working Group appears to play overall. The respondents had varied answers to the questions “what are the main projects and objectives of the WPWG”, and “what projects have the WPWG been working on since 2010”. The most likely explanation for these varying goals amongst the interviewees is that each actor within PNWER has individual

goals and agendas; the WPWG appears not to have projects, goals and objectives other than information dissemination, at least from the perspective of the respondents with knowledge on the Working Group. For instance, a respondent provided guidance on the importance of aquifer water issues for the Working Group. This particular issue was important in the respondent's home jurisdiction; it is doubtful this is specifically a core issue for the Working Group.

Meanwhile, another respondent listed the main projects of the WPWG as presentations on climate change, the connection between science research and policy, financial resource mechanisms, and items focusing on water policy in the jurisdiction that the annual meeting is held. This respondent listed very broad categories into which nearly all WPWG activity could fall, which is in stark contrast with other respondents' very specific answers. Another respondent provided a very administrative answer, related to process and organizational matters rather than specific outcomes, describing the main projects and objectives of PNWER as bringing disparate groups with individual goals together to engage in dialogue. Again, this is more of a process than a project answer, reflecting a less proactive stance for the WPWG.

These vastly different responses seem to indicate that the legislative component of PNWER has an inability to agree on an agenda for discussion at the WPWG. This may be in part due to the fact that these actors have extremely diverse views of what that agenda should include, or it may reflect that the organization is not yet functioning as more than an information dissemination organization.

### **3.3 PNWER Governance & the Effectiveness and Functionality of Constituent Diplomacy**

As explained in Chapter 2, the different constitutional arrangements, historical backgrounds, and other factors not within the prevue of this thesis resulted in the creation of differing Treaty operation structures in Canada and the United States. This in turn has relevance to how the individuals within the Working Group perceive the role of PNWER. When respondents were asked “What has PNWER’s role been in the CRT discussions?” and “Has PNWER taken an active role in CRT discussions?” there were a variety of answers, cut broadly along Canadian and American lines. A Canadian respondent spoke of a non-active approach in dealing with the Columbia River Basin that ensures elected officials understand what the Treaty is, and “as much as that, what the Treaty is not”. According to this respondent, the effectiveness of the WPWG ultimately lies in the dissemination of information to WPWG members in an equitable manner through the PNWER governance system, because while all parties to the Treaty are mandated government institutions, the method of consultation is different. These institutions are the Bonneville Power Administration (BPA), Army Corps of Engineers (ACE) and BC Hydro, which all lack a public process for engagement. Using constituent diplomacy at the level of PNWER to bring the representatives of states and provinces together without the intervention of federal governments allows for a more equitable and unbiased dispersion of information. In this way, the WPWG seems to be somewhat effective in that it provides a means for transmitting information directly to legislators and governors without as much influence of Canada or the United States; the complex communication channels often created by federalism cease to prohibit information distribution. This can only be effective

and efficient, however, if legislative members of PNWER know they are part of that working group.

A Canadian respondent said that the goal of PNWER regarding the Treaty discussions is to inform American legislators and private sector members. This non-active approach began early in the genesis of the WPWG, when it was a chief goal of the working group to ensure that legislators and business people knew that the Treaty would be open for renegotiation, cancellation, or amendment in 2024, pending notice in 2014. An American respondent viewed the role of PNWER in Treaty discussions as an advisory role. According to this respondent, PNWER is an advisory organization at which legislators discuss what they might like to see done. As a result of these advisory talks, this respondent believed that the conclusion has been reached that neither Canada nor the United States wants to see the Treaty return to Ottawa or Washington, DC and viewed local determination as desirable on both sides of the border. Another American respondent stated that they viewed PNWER as having an active role in Treaty discussions through PNWER representatives, who attend various meetings about the Treaty. These representatives, along with PNWER, provide the legislative and private sector members of the organization updates about the Treaty. They further stated, “I think we have, as a [state] legislature, a designated member on the WPWG”.

The responses also revealed perceived differences in how governance structures in the two countries may influence the practice of constituent diplomacy. The ability of the Canadian negotiators to directly communicate between BC Hydro, acting as both Canadian entity and Power Company, and the federal government as represented by BC manifests itself in Treaty discussions in what one American respondent calls “advantages”.

These “advantages” exist by virtue of the way that Canadian and American federal systems have developed. With regards to the kinds of “advantages” that the Canadian federal system bestowed, this respondent stated,

I would assume that Canadian MLAs would have a more direct influence [on PNWER and Treaty discussions] just because BC Hydro is a part of the Canadian government, whereas we have to go through multiple state and federal departments, agencies and so forth before we can even accomplish anything. It is simply a function of how the Canadian and American governments have been set up.

The respondent elaborated on this later in the interview when asked what sources PNWER has mined for information on the CRT. “BC Hydro is a part of the Canadian government” because it is a crown corporation “and it is the direct distributor of power, in addition to being the Canadian entity”. This, according to the respondent, allows for one government agency to carry out the responsibilities of many state and federal agencies in the US. This respondent does not believe that Canada is inherently more powerful than the US, nor is there any other reason that Canada should have an “advantage” in constituent diplomatic relations such as a regional transborder institutional setting like PNWER. Federal structures are the difference between direct and less direct influence for sub-state officials in constituent diplomatic affairs.

Overall, the interview responses point to some of the inherent challenges within constituent diplomacy. These challenges include the number of actors involved and differing institutional structures and responsibilities across the countries. One unexpected finding was the role of information asymmetries. Information asymmetries are imbalances



of information; one party has more information than another, or better information than another (Lightfoot et al. 2014, 2-3).

This theme of information asymmetries emerged unexpectedly during the interview process; when respondents were asked if there “have been any groups or initiatives that have stemmed from PNWER’s Treaty work”, the Canadian interviewees discussed a meeting that occurred during the 2011 PNWER Summit (referred to from herein as the Portland Summit) and a series of very important discoveries that resulted from this Summit. The American respondents did not mention the 2011 Summit, and seemed to lack knowledge about the Universities Consortium on Columbia River Governance (discussed below) altogether.

To provide some background, part of PNWER’s role as an advisory or active organization is to organize an annual meeting each summer. During this annual meeting, known as the PNWER Summit, work groups hold day-long breakout sessions. These sessions can focus on as little as one and as many as four key issues relevant to that working group and the stakeholders of PNWER. One of these day long sessions was held during the Portland Summit by the WPWG, acting in its advisory capacity. The Portland Summit WPWG breakout session was co-sponsored by the Universities Consortium on Columbia River Governance, which was founded in 2008 University of Idaho Professor of Law Barbara Cosens.

The Consortium is a non-partisan organization made up of five public universities within the CRT’s boundaries: University of British Columbia, University of Montana, University of Idaho, Oregon State University and Washington State University. The Consortium serves as the non-partisan arena where all parties can come together and

communicate their often divergent points of view (Universities Consortium on Columbia River Governance 2014). The Consortium and its member universities are sources for much of the current research on the Columbia River Basin and the Treaty. Cosens and others have used this research to craft articles that are being used to educate legislators on both sides of the border about very important issues such as hydrology, ecology, Native America and First Nations issues, and salmon spawning. Political science and social theoretical researchers conduct studies through the consortium; articles on systems theory have been produced using research from the Consortium. Cosens et al (Universities Consortium on Columbia River Governance, 2014) explain on the Consortium website that the goal of the organization is to be as non-biased as possible and that they do not wish to push either Canada or the United States towards a specific perspective. Instead, the Consortium is constructed to be a non-partisan and educational body, which is why it has been chosen as the neutral platform for discussion about issues related to the Columbia River Treaty.

Cosens delivered the main presentation during the WPWG breakout session at the 2011 Summit. It was during her presentation on water policy along the Columbia River that she and members of the Secretariat observed information asymmetries at play amongst the legislators. A respondent felt that “all [actors] left the Portland Summit with a better sense of the short versus the long term issues related to the Treaty,” and that “all [parties] expressed interest in an open dialogue,” as “leads from the US entity went back to their organizations and did a briefing on the lack of knowledge” US legislators and private sector members had about the Treaty.

Cosens continued to fill in gaps in knowledge, which led to another PNWER-inspired initiative. Cosens' and the Consortium's involvement with the WPWG's work surrounding the Treaty led Cosens to publish a book of collected essays about the Treaty and the Basin. The 2012 publication was comprised predominantly of work from the Consortium's member universities, with contributions from organizations such as the Bonneville Power Administration and United States Army Corps of Engineers. This publication features many more articles from the perspective of American scholars and the American entities than it does Canadian points of view, which given the information provided by the Canadian respondents about Cosens' 2011 Summit visit, seems to indicate an attempt to ameliorate information asymmetries between Canada and the United States with respect to issues of education about the Columbia River Treaty.

As described in Chapter two, the American review process is multi-layered. These multiple layers serve as multiple sources of information to the state legislators who are members of PNWER, a positive attribute. For instance, the 2014/2024 Columbia River Treaty Review not only releases a working draft to the public for comment; this working draft is released to the legislators in all of the Pacific Northwestern States.

Simultaneously, each state legislature provides an update on the 2014/2024 Review through the lens of that state's interests and placement along the Columbia River. Each of these documents, one primary and the other a synopsis of the primary document, presents a different perspective on the working official position of the region with respect to the Columbia River Treaty. As information is introduced and mixed with opinion and more voices are added to the conversation, the propensity of information asymmetries to occur increases. This cycle repeats as each new draft is released, and the senate hearing and the

field hearing of the House Committee is held, with progressively more opinions introduced to the body of information.

The Canadian review process is much more efficient and effective because of the streamlined relationship between Canada and British Columbia. This relationship ensures that the information received by the federal and BC governments regarding the CRT are relatively synchronized. There may be discrepancies in information received by the two levels of government; however, this does not ultimately matter because the Canadian Entity—BC Hydro—ultimately acts on behalf of and under the instructions of British Columbia, not Canada.

So-called “good” information only needs to land in the hands of the British Columbia government. While it is optimal that the best and most accurate information is presented to the federal government, the streamlined power sharing structure created by Article 92A wherein BC, as represented by BC Hydro is the representative for Canada in CRT negotiations, means that it is not essential. In contrast, because of the complex relationship between the federal and state governments in the U.S., it is vital that both be knowledgeable about the CRT negotiations; additionally, both the federal and state governments are an integral part of the CRT negotiations in the United States.

Because the Canadian and American political structures are determined by the respective constitutions of those nations, the problem of information asymmetry will and can never be completely fixed. Foreign relations in these countries will never mirror each other and constituent diplomacy levels in Canada and the US are different because of these different political structures (McMillian 2012, 101-102), making it impossible that both sides of the debate will or can know the exact same information. Indeed, it is a problem

present in many constituent diplomatic relationships, particularly between nations with different forms of government. There are, however, ways to ameliorate the problem. Healy and Palepu (2001) write about economic information asymmetries and the way in which transparency can help fix them. Healy and Palepu discuss corporate disclosure, and the importance of voluntary disclosures (press releases, reports, etc.) and disclosures by information intermediaries (audits, external reports, etc.). Barbara Cosens and the Universities Consortium are an example of an information intermediary in the case of the CRT discussions. The book edited by Cosens about the CRT was written with the primary purpose of closing information asymmetries; the intended audience was the American legislators who demonstrated a gap in knowledge about the CRT at the Portland Summit.

Overall, the observed imbalances in information were imbalances split along national lines. The main reason that information was disseminated in an inequitable manner along national lines is that the federal structures utilized by Canada and the United States are different (McMillian 102, 2012).

Constituent diplomatic sub-state powers interact in complicated ways. This chapter strived to better understand how Canada and the US engage in constituent diplomacy, and how factors such as governance and federal structure may impact sub-state units' constituent diplomatic relationships. The vastly different Canadian and American political systems, combined with a very complex federated structure of PNWER, has created an atmosphere within the WPWG in which it is difficult to accomplish the objectives the organization was originally formed to accomplish. As an organization, PNWER must contend with the road blocks that the amalgamation of many working parts presents, such as inefficiency and ineffectiveness caused by having too many total actors composing the

federation. Further, the disorganization of the multitude of actors that together form a federated PNWER contributes to this inefficiency and ineffectiveness within PNWER and its working groups.

Within the scope of the WPWG, the numerous levels, branches and subgroups within PNWER make it challenging for this particular subgroup of the organization to function in an efficient and effective manner; this complicated structure of PNWER is punctuated by the imbalance created by the political groundwork of the participating nations where divergent levels of complexity make the working group process asymmetrical with respect to outcomes for the two nations. The federated structure of PNWER seems to impede, at least to some degree, the constituent diplomatic work that Canadian and American legislators are trying to accomplish within the WPWG.

## **CHAPTER 4: Conclusion**

There are two sets of research questions that this thesis sought to answer. The first is, “What was the role of sub-state governments in the original Columbia River Treaty negotiations? What effect does the historical legacy of the Columbia River Treaty negotiations have on constituent diplomacy today?” The second set of research questions is, “What role does constituent diplomacy play within PNWER with respect to the upcoming Columbia River Treaty renegotiation? How does PNWER’s governance model impact the effectiveness and functionality of constituent diplomacy?” This chapter summarizes the key findings, and links these findings back to the larger body of scholarship on constituent diplomacy.

### **4.1 Federal Structures and Constituent Diplomatic Units**

This subsection addresses my first set of research questions, which is “What was the role of sub-state governments in the original Columbia River Treaty negotiations? What impact did federalism have on the negotiations?” As I address these questions, I will tie together the data from Chapter Two to form analysis about the impact of federal structure of constituent diplomatic units on their respective sub-state units in international negotiations.

Canada is a more decentralized federation than the United States, meaning that less power lies with the federal government and more power is spread amongst the provinces. During the time period when the CRT was being negotiated and ratified, a crucial shift occurred when Prime Minister John Diefenbaker was replaced by Prime Minister Lester B. Pearson in the 1963 election, with Pearson taking power in April of 1963. This change of power matters to this thesis, particularly the discussion of federalism and constituent diplomacy, because the major event that granted Premier Bennett the power to act on

behalf of Canada in the negotiating process occurred after April of 1963. The British Columbia-Canada Agreement of 1963 is just one example of Pearson turning power over to the provinces during this period—Quebec and Manitoba were also given greater control over certain resources at this time. Perhaps it was a difference in governing style between Diefenbaker and Pearson, or the function of Pearson leading a minority government that led to Canadian provinces' increasing substate power.

Had federalism in Canada at the time of 1964 agreement been more like its centralized American neighbor, the personality and propensity of Premier Bennett to act in a province-building fashion might not have mattered. The decentralized nature of Canadian government allows and may very well encourage premiers like Bennett to build power when given the chance. Whatever the case, it is because of this increasing decentralization of the federal government that Premier Bennett was able to act unilaterally in the negotiation of the lump sum payment and sale of the Canadian Entitlement without consulting Prime Minister Pearson.

WAC Bennett's negotiation of a one-time lump sum payment and Canadian Entitlement, though today highly controversial and from the Canadian perspective short-sighted, were at the time successful "wins" negotiated against a more bureaucratic and cumbersome US counter-party. Premier Bennett sought revenue to fund the Peace River hydroelectric project through his "Two Rivers Policy". It is important to focus on the fact that Premier Bennett negotiated the Canadian Entitlement with a particular view of the world and a considerable amount of power related to the Canadian parliamentary structure. Whether or not this Entitlement was or is ultimately beneficial to British Columbia is irrelevant to this discussion; it is the success of the negotiation by Premier Bennett that is



important in this chapter, and the inherent efficiency of Canadian federalism is interpreted to be a key driver of this outcome.

Already armed with the power decentralized federalism gave him to act without consulting the federal government, Premier Bennett wanted to exercise this autonomy through “defensive expansion” from the federal government (Tomblin 1990, 46). The driving force behind Premier Bennett’s quest to fund the Peace River aspect of the Two Rivers Policy via the Canadian Entitlement and the lump sum payment The Peace River project was ultimately the aspect of the Two Rivers Policy which Premier Bennett sought to fund through the CRT; he “insisted that the Peace River project would proceed, arguing that it was the only site fully under the control and jurisdiction of his administration” (Tomblin 1990, 51). In a demonstration of his “control and jurisdiction” (Tomblin 1990, 51) over the Peace River project, Premier Bennett decided to eliminate the private corporation managing the hydro power for British Columbia, despite major reservations from the federal government. This ability to unilaterally decide was a profound advantage held by British Columbia as a result of Pearson’s decentralizing federal power to British Columbia. This ultimately gave Canada leverage in the transborder negotiation.

With provincial control of hydropower and CRT negotiations, the Bennett government, representing Canada, asked the U.S. for the Canadian Entitlement and lump sum payment; the resulting action taken by the U.S. was responsive (Tomblin, 2014, 51). The U.S. granted Canada the lump sum payment and Entitlement without debate because of the streamlined relationship that Bennett had ensured between the federal and provincial governments, which now included the hydropower authority (Tomblin, 2014, 54). Prior to the creation of BC Hydro, the U.S. had believed that Premier Bennett would not be able to

develop the Peace River and therefore would be forced into developing the Columbia River Basin for hydropower regardless of the presence of a CRT. When Premier Bennett made BC Hydro a crown corporation, he effectively took away restrictions placed by the private and public hydropower corporations that had previously existed regarding development of the Peace River. The U.S. had no trump card in their negotiations against Canada; signing a Treaty that included an Entitlement and lump sum became inevitable (Tomblin 1990, 53-54).

Fundamentally, the decentralized Canadian federal system allows for much more sub-state freedom compared to the centralized American federal system (McMillian 102, 2012). McMillian says, “[w]hen compared to other sub-state governments, US states’ actions are constrained in several ways: constitutional prohibitions, American federalism, and American political culture” (102, 2012). McMillian goes on to specifically point out that the US states do not have the power to make treaties (102, 2012). While the Canadian provinces do not have this constitutional power, the decentralized federal system in Canada did allow for the close relationship between the federal and sub-state units that in turn created a space for the deal struck by Premier Bennett and the Canadian government.

In the modern era, the sheer multitude of actors involved in the 2014 Treaty Review Process prevents an individual (such as Premier Bennett in the past) from exercising autonomy as a means of achieving a goal. Instead, the process is slower and centered on consensus building. Still, the resulting documents indicate that the streamlined relationship between BC and the federal government has stood the test of time when it comes to the CRT, while the U.S. federal-state structure is still more complex with

individual participants having limited visibility on the overall process and their role within it.

#### **4.2 Information Asymmetries and Constituent Diplomacy**

Constituent diplomacy is much easier, and fairer, when both parties hold the same knowledge. This is not the way constituent diplomacy generally works, however, due to asymmetries in organizational structure and inefficiencies in the multi-stakeholder structure typical of a constituent diplomacy. The analysis of the literature research provides good case history evidence (e.g., Lecours 2010; Petter 2006; Keating 2000; Michelmann 2012) that constituent diplomacy operates in a smoother manner when parties are on an even playing field with regards to information. Of course, there are situations in which constituent units may not want other parties to a negotiation to have equal access to information; this may or may not have been the case with the Columbia River Treaty discussions at the WPWG. It is theoretically desirable where measures can be taken to mitigate the unfair dispersion of information, but many times this is simply not possible.

In the case of the CRT, the current American review process is structured in such a manner that it is difficult to prevent information asymmetries within an institutional framework like PNWER. When all actors involved in constituent diplomacy are privy to the same knowledge, the process is much smoother and equitable. Of course, constituent diplomacy doesn't operate this way most of the time. In reality, constituent diplomatic units are more often than not engaged in relationships that give power to one actor over others. Acknowledging these information asymmetries is one of the steps in closing the gap in knowledge that they create.

### **4.3 Simplified Structure Increases Efficiency and Effectiveness of an Organization**

This thesis also considered the questions: “What role does constituent diplomacy play within PNWER with respect to the upcoming Columbia River Treaty renegotiation? How does PNWER’s governance model impact the effectiveness and functionality of constituent diplomacy?” In Chapter Three, I argue that complexity negatively impacts the functionality of the WPWG.

A simplified organizational structure would enhance the WPWG’s efficiency and effectiveness. Currently, the WPWG is suffering from the broader organizational congestion of PNWER. It appears that there are too many actors with far too many roles involved in the discussion process. Perhaps if PNWER were to simplify its structure, working groups such as the WPWG might be able to contribute significantly to the policy dialogue as the founders of the institution had envisioned. Most importantly, it would appear that attempts to incorporate the political players in the process simply makes it impossible to do the baseline work of collection and analysis effectively. The various interviews in this study reflect the difficulty a political appointee has in participating in a process where he or she ultimately has to define a negotiating position for the home constituency.

### **4.4 Contributions**

The research contributed by this thesis is valuable for several reasons. Firstly, the research on PNWER to date is somewhat limited and the literature review and interviews contained here amalgamate and expand on the available body of work. In addition, the research that is currently available about PNWER appears to include little work from the constituent diplomatic perspective. Additionally, while this study is limited in its scope of five respondents, it is a qualitative study and studies of organizations such as PNWER

from the constituent diplomatic perspective are very difficult to find; this opens opportunities for policy-makers and observers alike to better understand constituent diplomatic relations among transborder, regional institutions. This can benefit outsiders trying to understand the operations of PNWER, and can also be of significant benefit to the actual institutional and organizational participants, individuals within organizations who may not understand the operations of the organization in which they work or offer opinion. From a purely operational standpoint, the staff and members of PNWER may benefit from this assessment of what is or is not working at various levels of operation in their organization, specifically in the WPWG, and may wish to consider organizational changes to fix the information gaps that appear to exist today. For any organization, an independent and objective analysis of function and effectiveness has potential to be a valuable resource.

By applying the research specific to PNWER's Water Policy Working group to a broader area of work (regional, transborder constituent diplomatic institutions), this thesis can aid in the broadening of several research fields. It contributes to the literature on constituent diplomacy, which compared with much of the literature on international relations, is still in its relative infancy. There are case studies of constituent diplomacy in action, though they are primarily country studies. The literature on constituent diplomacy could no doubt benefit from the addition of new institutional case studies and the PNWER example adds to this body of work. This case study is particularly interesting because constituent diplomacy takes place not only at PNWER's WPWG, but in other layers of government, on both sides of the border. This makes for a unique research question.

To those engaging in constituent diplomacy, the content of this thesis is potentially quite valuable. As sub-state units enter into constituent diplomatic relationships, both sub-state and federal actors can use the knowledge that information asymmetries potentially exist when these relationships exist within institutional frameworks to better conduct foreign affairs. For instance, federal governments can attempt to provide information to actors where asymmetries exist.

The document analysis of the Columbia River Basin contained in this thesis may be valuable in future water governance, specifically with regards to optionality of the Canadian Entitlement. Based on the analysis contained in this thesis, future stakeholders in water governance—particularly federal and substate governments—can avoid letting go of valuable assets before they reach their maximum value. Another potentially valuable aspect of water governance (particularly in North America) illuminated by the document analysis is the importance of First Nations/Native American voices in water boundary and water basin rights.

As of early 2016, the decision to renegotiate has been made (BC Hydro) and both the United States and Canada are working on separate plans detailing what they would like to see out of a renegotiated or revised Columbia River Treaty. Improving the current process will be important for both sides, and understanding the risks and reward inherent in the organizational asymmetries across the border will be vital to the best interests of both sides. In this context, the historical lens applied to this study has been very valuable, pointing out the consequences of the significant asymmetries in the original negotiation (where Canada is viewed as having benefited from the cleaner organizational structure) and by comparison pointing out the critical need to address this locus for the gain or loss

of value in the upcoming negotiation. Had one viewed the information from other perspectives lacking this historical context, it is not clear the same conclusions would emerge.

#### **4.5 Recommendations for Future Research**

There are many options for future research with regards to this research question. No research project can be exhaustive, and by no means is this thesis. Indeed, there are several perspectives and directions to expand and augment this research question. More interviews with legislative members of PNWER, particularly those from British Columbia, are necessary to gain the perspective of Canadian legislative members of PNWER. This perspective is simply absent from the research of this thesis due to the limited number of Canadian political participants and their lack of availability for the study. Another opportunity for future research is to attend an annual meeting of PNWER and capture in-person interview data. This may yield more relevant data on how this specific organization can be improved in the lead-up to the next negotiations. Additionally, a research project compiling a list or database of all of the current members of each of the fourteen working groups would be extremely valuable for not only people trying to find out such information but for the organization itself, which appears to lack such a database at present. Finally, research into a potential separation between the political and data gathering operations of PNWER is a potential source of value for future researchers.

Constituent diplomacy has been an important factor in the life of the Columbia River Treaty. The effectiveness of sub-state governments during the original process of negotiating the Treaty was greatly impacted by the federal structures of both Canada and the U.S. For instance, the Canadian legislative structure allowed Premier Bennett to enjoy a particularly powerful position relative to the American negotiators in the original

negotiations. Further, whereas generally constituent diplomacy between countries with unitary systems involves fewer sub-unit actors, such diplomacy between countries with federal systems generally involves more sub-unit actors. Institutions such as PNWER attempt to provide a forum for state and provincial actors to come together in a non-binding manner to discuss issues such as the Treaty. The complex governance model adopted by PNWER serves to add further complication to the current/ upcoming Treaty negotiation process rather than to simplify it, making it less functional and effective. As 2024 approaches, and the potential for a renegotiated treaty nears, American and Canadian legislators remember what they perceive to be the wrong done to them in the last round of negotiations, which so far has led to disparate positions from the two federal systems. It remains to be seen if and when the Treaty is renegotiated what role constituent diplomacy will play.



## Works Cited

- Ballinger, Claire, "Encyclopedia of qualitative research methods", (Sage Publications: Thousand Oaks, 2008) 780-783
- Banks, Nigel et al., "The Future of the Columbia River Treaty". 2012.
- Bailey, Alexandra. "Water Law: The Interjurisdictional Context." University of Alberta Centre for Constitutional Studies. August 01, 2008. Accessed March 24, 2016. [http://ualawccsprod.srv.ualberta.ca/ccs/index.php/constitutional-issues/federalism/50-water-law-the-interjurisdictional-context#\\_ftn3](http://ualawccsprod.srv.ualberta.ca/ccs/index.php/constitutional-issues/federalism/50-water-law-the-interjurisdictional-context#_ftn3)
- BC Ministry of Energy and Mines, "The Evolution of British Columbia's Industrial Electricity Policy" (2014)
- BC Ministry of Energy, Mines and Plutonium, "History of the Columbia River Treaty" (2012)
- Blyth, Mark, "When Liberalism, National and Regional Experiments with Global Ideas, ed. Arthur T. Denzau, et al. (London) *Liberalism Change: Comparing the Politics of Deflations and Inflation*, in *Neoliberalism and New York*: Routledge)
- British Columbia Columbia River Treaty Review 2014
- Brown, Lytle et al., 308 Reports. Retrieved from Center for Columbia River History website on March 17, 2015. <http://www.ccrh.org/comm/umatilla/primary/308rppt.htm>, 1926.
- Cohn, Theodore H. and Patrick J. Smith. "Subnational Governments as International Actors: Constituent Diplomacy in British Columbia and the Pacific Northwest," *BC Studies* 110 (1996): 25-59
- The Constitution Act, 1867, 30 & 31 Vict, c 3, Section 132
- de Loe, Rob et al., "Challenging the Status Quo: The Evolution of Water Governance in Canada" in *Eau Canada: The Future of Canada's Water*, ed. Karen Bakker, (UBC Press, 2007)
- Encyclopedia of BC. "BC Hydro and Power Authority". Source: KnowBC.com
- Encyclopedia of BC. "Crown Corporation". Source: KnowBC.com
- Evans, David, et al., *How to Write a Better Thesis*, 2<sup>nd</sup> edn. (Melbourn University Press: Carlton, 2002).
- George, Alexander L. et al. "Case Studies and Theory Development in the Social Sciences" (Cambridge, Mass.: MIT Press, 2005)

Gephart, Robert “Qualitative Research and the *Academy of Management Journal*”  
(*Academy of Management Journal* 47:4: 454-62, 2004)

Healy and Palepu. 2001. “Information asymmetry, corporate disclosure, and the capital markets: A review of the empirical disclosure literature”.

Hyde, John M. 2010. “Columbia River Treaty Past and Future.” Columbia River Treaty 2014/2024 Review Board.

International Columbia River Board of Control Mandate (2014)  
<[http://ijc.org/en\\_/icrbc/mandate](http://ijc.org/en_/icrbc/mandate)>

International Joint Commission, 2013a. “The Commissioners”.  
[http://www.ijc.org/en\\_/The\\_Commissioners](http://www.ijc.org/en_/The_Commissioners)

International Joint Commission, 2013b. “What is the Boundary Waters Treaty?”.  
[http://ijc.org/files/tinymce/uploaded/Boundary%20Waters%20Treaty%20of%201909\\_3.pdf](http://ijc.org/files/tinymce/uploaded/Boundary%20Waters%20Treaty%20of%201909_3.pdf)

ICREB Docket 44A “An Application by the United States Government for approval for the construction (already underway) and operation of the Grand Coulee Dam and reservoir on the Columbia River” (1940)

International Monetary Fund Staff, November 2001. “Global Trade Liberalization and the Developing Countries”. <http://www.imf.org/external/np/exr/ib/2001/110801.htm>

*Foreign policy of constituents units at the beginning of 21st century* Ed. Requejo, Ferran (Generalitat de Catalunya. Institut d’Estudis Autònoms: Addenda, 2009)

Kincaid, John. "Scientific Background: Subtheme Paper Foreign Relations of Sub-national Units." In *Foreign Relations of Sub-national Units*, edited by Raoul Blindenbacher and Arnold Koller, 74-96. McGill-Queen's University Press, 2003.

Kincaid, John. “Constituent Diplomacy in Federal Polities and the Nation-state: conflict and co-operation”. Ed. Michelmann, Hans J. Et al. *Federalism and International Relations: the role of subnational units*. (New York: Oxford University Press, 1990 pp. 54-76.

Keating, Michael. 2000. *Paradiplomacy and Regional Networking*.

Kirkpatrick, Kevin. 2013. *The Columbia River Treaty’s Canadian Entitlement: The Role of Liberalized and Integrated North American Electricity Markets in a New Calculation*.

Lecours, Andre. *Canadian Federalism and Foreign Relations: Quebec and Canada in Foreign policy of constituents units at the beginning of 21<sup>st</sup> century*. 2010. Generalitat de Catalunya. Institut d’Estudis Autònoms

Lightfoot, Geoffrey et al. *Information Asymmetry and Power in a Surveillance Society* (2014)

Magone, Jose M. "Constituent diplomacy Revisited: The Structure of Opportunities of Global Governance and Regional Actors". 2006.  
[http://www.unizar.es/union\\_europea/files/document/conferencia%2010.2006/JoseMAGON E%20final.pdf](http://www.unizar.es/union_europea/files/document/conferencia%2010.2006/JoseMAGON E%20final.pdf)

McMillian, Samuel Lucas "The Involvement of State Governments in US Foreign Relations" (Palgrave Macmillan 2012)

Merkel, Garry. 2012. "First Nations", in *Transboundary River Governance in the Face of Uncertainty: The Columbia River Treaty: A Project of the Universities Consortium on Columbia River Governance*, ed. Barbara Cosens. (Oregon State University Press: Corvallis, 2012)

Mill, John Stuart , (1862). *Considerations on representative government.* , (pp. 320-335). New York, NY, US: Harper & Brothers, viii

Mouat, Jeremy, "The Columbia Exchange: A Canadian Perspective on the Negotiation of the Columbia River Treaty, 1944–1964". in *Transboundary River Governance in the Face of Uncertainty: The Columbia River Treaty: A Project of the Universities Consortium on Columbia River Governance*, ed. Barbara Cosens. (Oregon State University Press: Corvallis, 2012)

Muckleston, Keith W. "International Management in the Columbia River System." UNESCO. 2003.

O'Neal, Brian. "Electoral Systems". 1993. Political and Social Affairs Division, Parliamentary Research Branch.

Oregon State University. 2013. Columbia River Basin. <<http://oregonstate.edu/terra/wp-content/uploads/2013/07/BasinOverview2.jpg>>

*A Global Dialogue on Federalism: Foreign Relations in Federal Countries*, Ed. Michelmann, Hans (McGill-Queen's Press: Ottawa, 2009)

-Kincaid, John in *A Global Dialogue on Federalism: Foreign Relations in Federal Countries* in ed. Michelmann, Hans. (McGill-Queen's Press: Ottawa, 2009)

Oxford University Press, 2015, "Effectiveness".  
<[http://www.oxforddictionaries.com/definition/american\\_english/effectiveness](http://www.oxforddictionaries.com/definition/american_english/effectiveness)>

Oxford University Press, 2015, "Functionality".  
<<http://www.oxforddictionaries.com/definition/english/>>

Pacific Northwest Economic Region, 2012a, Background.<[www.pnwer.org/background](http://www.pnwer.org/background)>

Pacific Northwest Economic Region, 2012b, About Us.  
<[www.pnwer.org/AboutUs/PNWERHistory.aspx](http://www.pnwer.org/AboutUs/PNWERHistory.aspx)>

Pacific Northwest Economic Region. 2007. *Pacific Northwest Economic Region Annual Report 2007*.

<<https://docs.google.com/file/d/0BzOZobqARmbZZWEwN2Y1MzItODcxYy00Mzg5LTg5NzctZjVhNTI2MDM0ODEz/edit?num=50&sort=name&layout=list&pli=1#>>

Pacific Northwest Economic Region. 2008. *Pacific Northwest Economic Region Annual Report 2008*.

<<https://docs.google.com/file/d/0BzOZobqARmbZOWNiNzVhMzgtMWNlZC00MjQwLWEyNzctODFiMGYxZDAwNWY4/edit?num=50&sort=name&layout=list&pli=1#>>

Pacific Northwest Economic Region. 2009. *Pacific Northwest Economic Region Annual Report 2009*.

<<https://docs.google.com/file/d/0BzOZobqARmbZZjU3MTM0OTAtMTA2OC00ZTNmLTgzMjEtOTdlMmRjNmVIY2Zm/edit?num=50&sort=name&layout=list&pli=1#>>

Pacific Northwest Economic Region. 2011. *Pacific Northwest Economic Region Annual Report 2011*. <[http://issuu.com/dtyne/docs/2011\\_annual\\_report\\_-\\_final?e=6767692/2825428](http://issuu.com/dtyne/docs/2011_annual_report_-_final?e=6767692/2825428)>

Pacific Northwest Economic Region. 2012. *Pacific Northwest Economic Region Annual Report 2012*. <http://www.pnwer.org/Portals/0/Annual%20Report%20Final%20-%20Web.pdf>

Pacific Northwest Economic Region. 2013. *Pacific Northwest Economic Region Annual Report 2013*. [http://issuu.com/pnweconomicregion/docs/2013\\_annual\\_report](http://issuu.com/pnweconomicregion/docs/2013_annual_report)

Paisley, Richard Kyle et al. "Columbia River Treaty: Past, Present and Future" in "Water Without Borders: Canada, the U.S. and Shared Water" Editors Bakker, Karen, Emma Norman and Alice Cohen (University of Toronto Press: Toronto 2012)

Petter, Andrew. 2006. "Canadian Paradiplomacy in Practice: Confessions of a Paradiplomat."

<[http://www.unizar.es/union\\_europea/files/documen/conferencia%2010.2006/Petter-english\\_final.pdf](http://www.unizar.es/union_europea/files/documen/conferencia%2010.2006/Petter-english_final.pdf)>

Prior, Lindsay F. "Document Analysis" in "The SAGE Encyclopedia of Qualitative Research Methods" Ed. Given, Lisa M. (Thousand Oaks, CA: SAGE Publications, Inc., 2008)

Requejo, Ferran, "Foreign Policy of Constituents Units in a Globalized World" in ed. Requejo, Ferran, (International Workshop, 2009)

"Foreign policy of constituent units at the beginning of 21st century" ed. Requejo, Ferran, (International Workshop, 2009)

Swainson, Neil A.. “The Columbia River Treaty—Where Do We Go From Here?”  
(*Natural Resources Journal* 26: 243-59,1986)

Shurts, John. “The Columbia River Treaty after 2024” in *Transboundary River Governance in the Face of Uncertainty: The Columbia River Treaty: A Project of the Universities Consortium on Columbia River Governance*, ed. Barbara Cosens. (Oregon State University Press: Corvallis, 2012)

The Governments of Canada and United States of America. *Treaty between Canada and the United States of America relating to Cooperative Development of the Water Resources of The Columbia River Basin*. (Columbia River Treaty 2014/2024 Review, 1964)

Tomblin, Stephen G. “W. A. C. Bennett and Province-Building in British Columbia”. 1990. <http://ojs.library.ubc.ca/index.php/bcstudies/article/viewFile/1346/1389>

Universities Consortium on Columbia River Governance (2014)  
<http://www.columbiarivergovernance.org/>

US Army Corps of Engineers, et al. 2012. “Columbia River Treaty: History and 2014/2024 Review”.

US Army Corps of Engineers. “Columbia River Basin Dams”. Accessed January 5, 2016.

White, Anthony G. 2012. “The Columbia River: Operation under the 1964 Treaty”, in *Transboundary River Governance in the Face of Uncertainty: The Columbia River Treaty: A Project of the Universities Consortium on Columbia River Governance*, ed. Barbara Cosens. (Oregon State University Press: Corvallis, 2012)

Wozniacka, Gosia, “US sets stance for Columbia River bargaining”, (Associated Press, December 13, 2013)

Vengroff, Richard and Rich, Jason. *Paradiplomacy and the Canadian Provinces*. 2004.  
<<http://ciber.business.uconn.edu/wp-content/uploads/sites/967/2014/11/paradiplomacycanadianprovinces.pdf>>

Vogel, Eve. 2007. “Regionalization and Democratization Through International Law: Intertwined Jurisdictions, Scales and Politics in the Columbia River Treaty”. (*Oregon Review of International Law*. Vol.9: 337-388)